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In re Application of : DECISION ON
Contreras et al :
Application No.: 09/763,011 :
PCT No.: PCT/EP99/05991 : PETITION UNDER
Int. Filing Date: 16 August 1999 :
Priority Date: 14 August 1998 : 37 CFR 1.137(b)
Attorney's Docket No.: JAB-1415 :
For: DRUG TARGETS IN CANDIDA ALBICANS :
:

This decision is in response to applicants' "Petition For Revival Of Application For Patent Abandoned Unintentionally Under 37 CFR 1.137(b)," filed on July 31, 2003.

BACKGROUND

On 16 August 1999, this international application was filed, claiming an earliest priority date of 14 August 1998.

A Demand electing the United States was filed in this international application was filed on 23 February 2000. Accordingly, the deadline for paying the basic national fee in the United States under 35 U.S.C. 371 and 37 CFR 1.495 was 14 February 2001. This international application became abandoned with respect to the United States at midnight on 14 February 2001 for failure to pay the required basic national fee.

On 14 February 2001, applicants filed a Transmittal letter (Form PTO-1390) for entry into the national stage in the United States, which was accompanied by, basic national fee and an executed declaration.

On 26 April 2001, the United States Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that a copy of the "Sequence Listing" in computer readable form has not been submitted as required by 37 CFR 1.821(e). The notification set two (2) months time limit or 32 months from the priority date for the application, whichever is later to respond.

On 14 December 2001, the United States Designated/Elected Office mailed a Notification of Defective Response (Form PCT/DO/EO/916) indicating that the nucleotide and/or amino acid sequence disclosure contained in the application did not comply with the

applicant must provide a substitute computer readable form (CRF) must be submitted as required by 37 CFR 1.825(d).

On 01 October 2001, petitioner filed a "Response to Notification of Missing Requirements," which included a computer readable form of the Sequence Listing for this application.

On 31 January 2003, the United States Designated/Elected Office mailed a Notification of Defective Response (Form PCT/DO/EO/916) indicating that the nucleotide and/or amino acid sequence disclosure contained in the application did not comply with the requirements for such disclosure as set forth in 37 CFR 1.821-1.825 because the computer readable form that has been filled with this application has been found to be damaged and/or unreadable as indicated on the attached CRF Diskette Problem Report. It further indicated that applicant must provide a substitute computer readable form (CRF) of the "Sequence Listing." The decision gave petitioner one (1) MONTH from the mail date of the Notification of Defective Response, or the time period set for the related Notification of Missing Requirements, which was mailed on April 26, 2001. The notification further stated that the time period for response set in the Notification of Missing Requirements may be extended under the provisions of 37 CFR 1.136(a).

On 31 July 2003, petitioners submitted the instant petition under 37 CFR 1.137(b), which was accompanied by, *inter alia*, a substitute paper and computer readable form the Sequence Listing.

DISCUSSION

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application; (2) the petition fee as set forth in § 1.17(m); and (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and (4) any terminal disclaimer (and fee as set forth in § 1.20 (d)) required pursuant to paragraph (c) of this section.

The petition is not deemed to satisfy the requirements under 37 CFR 1.137(b).

Petitioners have provided: (2) the petition fee set forth in § 1.17(m) and (3) the proper statement under 137(b)(3). In this application, no terminal disclaimer is required. However, Petitioners have not met requirement (1) because the reply is not proper since the computer readable form the Sequence Listing was damaged.

The petition under 37 CFR 1.137(b) is **DISMISSED** without prejudice.

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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Enclosed: CRF Problem Report